

STATE OF MICHIGAN  
COURT OF APPEALS

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DANIEL HALL,

Plaintiff-Appellant,

v

ANDREW WRIGHT,

Defendant-Appellee.

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UNPUBLISHED

January 18, 2002

No. 220500

Wayne Circuit Court

LC No. 97-715257-NZ

Before: Bandstra, C.J., and Doctoroff and White, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a judgment of no cause of action on plaintiff's claims of fraud and misrepresentation, conversion, aiding in the concealment of conversion, and intentional infliction of emotional distress. The court also denied plaintiff's request for an accounting. Plaintiff appeals as of right. We affirm.

The trial court did not err in excluding the results of defendant's polygraph examinations. *Price v Long Realty, Inc.*, 199 Mich App 461, 466; 502 NW2d 337 (1993); *MSEA v Civil Service Comm.*, 126 Mich App 797, 805; 338 NW2d 220 (1983), citing *People v Barbara*, 400 Mich 352, 364; 255 NW2d 171 (1977). Further, mindful that this was a bench trial where the trial court served as the trier of fact, we find that the court did not abuse its discretion in excluding the polygraph examination evidence to show character under MRE 405(b). As the trial court recognized, testimony from the polygraph examiners would not have been probative of defendant's credibility.

We agree that the trial court erred when stating in its opinion that plaintiff had argued that "defendant's behavior with regard to a polygraph examination demonstrated consciousness of guilt," because there is nothing in the record showing that plaintiff made such an argument. Nonetheless, reversal is not required because there is no indication that plaintiff was prejudiced by this erroneous statement. Contrary to what plaintiff argues, the trial court did not clearly err in stating that "defendant was originally scheduled to take a polygraph, which was re-scheduled; at the rescheduled time, plaintiff and defendant had ended their relationship, and defendant then declined to participate." These findings are supported by defendant's testimony on direct examination by plaintiff.

We also disagree with plaintiff's claim that the trial court denied him the opportunity to present evidence pertaining to the circumstances surrounding defendant's polygraph

examinations. Although the trial court excluded the *results* of the polygraph examinations, it did not prevent plaintiff from asking defendant whether he took a polygraph examination or why. Nor was plaintiff precluded from conducting any legitimate questioning or cross-examination, or from asking the trial court to take judicial notice of the pleadings. Additionally, even assuming that the trial court wrongly precluded plaintiff from establishing that defendant untruthfully asserted in his counter complaint that he had passed a polygraph examination, and from inquiring into the assertion, we think it clear from the record that the court understood plaintiff's argument in this regard, and would not have reached a different result had the questioning taken place.

Next, plaintiff argues that the trial court erred in allowing defendant to withdraw his counter complaint. However, because plaintiff's counsel affirmatively approved the request to withdraw the counter complaint, specifically stating on that record that he did not contest withdrawal, we find that this issue is waived. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000).

Next, plaintiff argues that the trial court erred in entering a judgment of no cause of action on plaintiff's claims of fraud and misrepresentation, conversion, aiding in concealment of a conversion, and intentional infliction of emotional distress, and by denying plaintiff's request for an accounting. Plaintiff's arguments concerning these claims are based on his contention that the trial court prevented him from presenting evidence of defendant's lack of credibility when it precluded evidence that defendant had claimed that he passed an earlier polygraph examination, but never produced results to support that assertion, and by allowing defendant to withdraw his counter complaint. In light of our conclusion that the trial court did not err in excluding evidence of the polygraph examination results, and that plaintiff waived the issue involving the withdrawal of defendant's counter complaint, we find that this issue is without merit. Because special deference is accorded to the trial court's assessment of credibility and because plaintiff failed to identify any clear errors in the court's factual findings, plaintiff has failed to show that the trial court erred in entering a judgment of no cause of action on plaintiff's claims. MCR 2.613(C); *H J Tucker & Associates, Inc v Allied Chucker and Engineering Co*, 234 Mich App 550, 569; 595 NW2d 176 (1999); *Triple E Produce Corp v Mastronardi Produce*, 209 Mich App 165, 171; 530 NW2d 772 (1995).

Plaintiff also argues that the trial court's determination that defendant was more credible is against the great weight of the evidence. Here, plaintiff waived this issue by failing to raise it in a motion for a new trial before the trial court. *Hyde v University of Michigan Bd of Regents*, 226 Mich App 511, 525; 575 NW2d 36 (1997). Even if the issue were not waived, we would conclude that it lacks merit. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

Finally, we reject defendant's request to impose sanctions against plaintiff for filing a vexatious appeal. We cannot say that plaintiff's brief is "grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court" as to warrant sanctions. MCR 7.216(C)(1)(b); *Cvengros v Farm Bureau*

*Ins*, 216 Mich App 261, 269; 548 NW2d 698 (1996).

Affirmed.

/s/ Richard A. Bandstra

/s/ Martin M. Doctoroff

/s/ Helene N. White